

09-20-1999

U.S. DEPARTMENT OF COMMERCE

9/16/99

101148368

EET RECEIVED Patent and Trademark Office  
Docket No. 7933-232

1999 SEP 16 AM 11:16

To the Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
MarketFare Foods, Inc.

- ☐ Individual(s) ☐ Association  
☐ General Partnership ☐ Limited Partnership  
☒ Corporation-State ☐ Other  
 Delaware

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger  
☒ Security Agreement ☐ Change of Name  
☐ Other:

Execution Date: June 21, 1999

2. Name and address of receiving party(ies):

Name: Wells Fargo Bank, N.A.  
 Internal Address: 17th Floor  
 Street Address: 555 Montgomery Street  
 City: San Francisco, State: CA ZIP: 94111

- ☐ Individual(s) citizenship: \_\_\_\_\_  
☒ Association: National Banking Association  
☐ General Partnership: \_\_\_\_\_  
☐ Limited Partnership: \_\_\_\_\_  
☐ Corporation-State: \_\_\_\_\_  
☐ Other: \_\_\_\_\_

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or registration number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Trademark Application No.(s)

(see attached)

B. Registration No.(s)

(see attached)

Additional numbers attached? ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Douglas L. Hendricks  
 Morrison & Foerster LLP  
 425 Market Street  
 San Francisco, California 94105-2482

6. Total number of applications and trademark registrations involved: 30

7. Total fee (37 C.F.R. § 3.41): \$ 765.00

- ☒ Enclosed  
☐ Authorized to be charged to deposit account, referencing Attorney Docket 7933-232

8. Deposit account number: 93-1952The Commissioner is hereby authorized to charge any fees under 37 C.F.R. § 1.21 which may be required by this paper, or to credit any overpayment to Deposit Account No. 93-1952.

## DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Name: Douglas L. Hendricks

*Douglas L. Hendricks* 9/13/99  
 Signature Date

Total number of pages comprising cover sheet, attachments and document: 9

09/17/1999 DNGUYEN 00000348 75575397

01 RC:481 40.00 OP  
 02 RC:482 725.00 OP

Mail documents to be recorded with required cover sheet information to:  
 Commissioner of Patents and Trademarks  
 Box Assignments  
 Washington, D.C. 20231

sf-749573

TRADEMARK  
 REEL: 001959 FRAME: 0816

#### 4. APPLICATION AND REGISTRATION NUMBERS

##### A. APPLICATIONS

<u>Country</u>	<u>Trademark</u>	<u>Serial No.</u>
United States	Breakfast-In-A-Mint***	75/575397
United States	Deli Fresh***	75/576503
United States	Deli-In-A-Mint***	75/576887
United States	Lunch-In-A-Minit***	75/576847
United States	Sonritos	75/639925

##### B. REGISTRATIONS

<u>Country</u>	<u>Trademark</u>	<u>Registration No.</u>
United States	Aunt Bea's	1286250
United States	Deli Pride and Design	1294751
United States	Festitos	1912702
United States	High Plains	2147807
United States	Italini	1394254
United States	Italini and Design	1394253
United States	Lady in Apron Design	1275428
United States	Old Sante Fe (Stylized)	1391003
United States	Pizza Grande	1422133
United States	Quick Eats	2162959
United States	Sandito	1246533
United States	Sausawrap	1936153
United States	Smiley Face Design	1308220
United States	Smileys	960064
United States	Smileys	961608
United States	Southern Acres	1528508
United States	Super Tato	1469228
United States	Takeouts Select	2179710
United States	Oven-In-A-Bag	2206240
United States	Round Street	2056322
United States	Smiley's All Stars	2220617
United States	Today's Market & Design	2080937
Canada	Italini	386433
Canada	Smiley's	197880
Canada	Smiley's Sandwich and Design	197883

TRADEMARK  
REEL: 001959 FRAME: 0817

## TRADEMARK AGREEMENT

THIS TRADEMARK AGREEMENT (this "Agreement"), dated as of June 21, 1999, is made by is made by MARKETFARE FOODS, INC., a Delaware corporation (the "Debtor"), in favor of WELLS FARGO BANK, N.A., as agent for each of the Lenders (as defined hereinafter) (together with its permitted successors and assigns in such capacity, the "Administrative Lender").

### RECITALS

WHEREAS, the Debtor has entered into the Revolving Credit and Term Loan Agreement, dated as of June 21, 1999 (as amended, modified or supplemented from time to time, the "Credit Agreement"), among the Debtor, the financial institutions party thereto (together with the Swap Providers, the Issuing Bank and the Swingline Lender (each as defined in the Credit Agreement), the "Lenders"), and the Administrative Lender.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Debtor hereby agrees, for the benefit of the Administrative Lender and the Lenders, as follows:

#### 1. DEFINITIONS

Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Credit Agreement.

#### 2. GRANT OF SECURITY INTEREST

As collateral security for the prompt and complete payment and performance of the Obligations, the Debtor hereby assigns and pledges to the Administrative Lender for its benefit and the ratable benefit of each of the Lenders, and hereby grants to the Administrative Lender for its benefit and the ratable benefit of each of the Lenders a security interest in, all of the Debtor's right, title and interest in and to the following, whether now or hereafter existing or acquired (the "Trademark Collateral"):

(a) all registered trademarks and service marks of the Debtor, all registrations and recordings thereof, and all applications in connection therewith (collectively, the "Trademarks") listed in Item A of Attachment 1 hereto;

(b) all licenses of Trademarks to or by Debtor, including each Trademark license referred to in Item B of Attachment 1 hereto;

(c) all reissues, extensions or, renewals of any of the items described in clauses (a) and (b);

(d) all of the goodwill of the business connected with the use of, and symbolized by the items described in, clauses (a) and (b); and

(e) all proceeds of, and rights associated with, the foregoing, including any claim by the Debtor against third parties for past, present, or future infringement or dilution of any Trademark, Trademark registration, or Trademark license, including any Trademark, Trademark registration, or Trademark license referred to in Item A and Item B of Attachment 1 hereto, or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark license.

### **3. SECURITY AGREEMENT**

This Agreement has been executed and delivered by the Debtor for the purpose of registering the security interest of the Administrative Lender in the Trademark Collateral with the United States Patent and Trademark Office and Canadian Patent and Trademark Office. The security interest granted hereby has been granted as a supplement to, and not in limitation of, the security interest granted to the Administrative Lender for its benefit and the benefit of each of the Lenders under the Security Agreement. The Security Agreement (and all rights and remedies of the Administrative Lender thereunder) shall remain in full force and effect in accordance with its terms.

### **4. RELEASE OF SECURITY INTEREST**


Upon the payment in full of the Loans, Cash Collateralization, expiration or termination of all Letters of Credit and the Commitments, termination of all Swap Contracts with the Swap Providers and payment of the other Obligations then due and payable, the assignment, pledge and security interest granted herein shall automatically terminate, and all rights to the Trademark Collateral shall revert to the Debtor. Upon any such termination, the Administrative Lender shall, at the Debtor's expense, execute and deliver to the Debtor all instruments and other documents as Debtor shall reasonably request to release the Lien upon the Trademark Collateral which has been granted hereunder to evidence such termination.

### **5. ACKNOWLEDGMENT**

The Debtor does hereby further acknowledge and affirm that the rights and remedies of the Administrative Lender with respect to the security interest in the Trademark Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

IN WITNESS WHEREOF, the Debtor has caused this Agreement to be duly executed -  
and delivered by its officer thereunto duly authorized as of the day and year first above  
written.

MARKETFARE FOODS, INC.

By:   
Reed Iwami, President

Trademark Agreement

Attachment 1 - Trademarks and Licenses

MarketFare Foods, Inc.

Item A. Trademarks

Registered Trademarks

<u>Country</u>	<u>Trademark</u>	<u>Registration No.</u>
United States	Aunt Bea's	1286250
United States	Deli Pride and Design	1294751
United States	Festitos	1912702
United States	High Plains	2147807
United States	Italini	1394254
United States	Italini and Design	1394253
United States	Lady in Apron Design	1275428
United States	Old Sante Fe (Stylized)	1391003
United States	Pizza Grande	1422133
United States	Quick Eats	2162959
United States	Sandito	1246533
United States	Sausawrap	1936153
United States	Smiley Face Design	1308220
United States	Smileys	960064
United States	Smileys	961608
United States	Southern Acres	1528508
United States	Super Tato	1469228
United States	Takeouts Select	2179710
United States	Oven-In-A-Bag	2206240
United States	Round Street	2056322
United States	Smiley's All Stars	2220617
United States	Today's Market & Design	2080937
Canada	Italini	386433
Canada	Smiley's	197880
Canada	Smiley's Sandwich and Design	197883

Possible State Registrations

<u>Mark</u>	<u>States of Registration</u>
Deli Fresh****	Colorado, Idaho, Washington, Arizona
Deli Pride****	Nevada, Utah, Arizona, Colorado, Idaho, Montana, Oklahoma, Oregon, Washington, Alabama, Alaska, California, Florida, Georgia, Louisiana, Missouri, Mississippi, New Mexico, Texas, Virginia, West Virginia, Wyoming

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**TRADEMARK**  
**REEL: 001969 FRAME: 0821**

Pending Trademark Applications

<u>Country</u>	<u>Trademark</u>	<u>Serial No.</u>
United States	Breakfast-In-A-Mint***	75/575397
United States	Deli Fresh***	75/576503
United States	Deli-In-A-Mint***	75/576887
United States	Lunch-In-A-Minit***	75/576847
United States	Sonritos	75/639925

Trademark Applications in Preparation

<u>Country</u>	<u>Trademark</u>	<u>Docket No.</u>	<u>Expected Filing Date</u>
United States	MarketFare		approx. 5/27/99

Item B. Trademark Licenses

<u>Trademark</u>	<u>Licensor</u>	<u>Licensee</u>	<u>Date</u>	<u>Effective Date</u>	<u>Expiration</u>
Big Un	The Southland Corporation	Borrower	11/29/92		
Casa Buena	The Southland Corporation	Borrower	11/29/92		
Deli Shoppe	The Southland Corporation	Borrower	11/29/92		
Egg Hamlette	The Southland Corporation	Borrower	11/29/92		
Truck Stopper	The Southland Corporation	Borrower	11/29/92		
Slurpee	The Southland Corporation	Borrower	11/29/92		
Slurpee Light	The Southland Corporation	Borrower	11/29/92		
7-Eleven and Design	The Southland Corporation	Borrower	11/29/92		
Double Whammy	The Southland Corporation	Borrower	11/29/92		
Get Hot	The Southland Corporation	Borrower	11/29/92		
Deli-Central	The Southland Corporation	Borrower	6/24/96		
Del Monte	Del Monte Corporation	Borrower	2/10/99		2/9/02;
Del Monte					Del Monte
and shield design					may terminate
					upon 1 year
					notice
Wild Blueberry	Wild Blueberry Association	Borrower	4/30/98		
Association of	of North America, Inc.				
North America, Inc.					
licensing certification					
mark					
Chiquita name &	Chiquita Brands, Inc.	Borrower	5/1/98		6/30/00
logos					

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**TRADEMARK**  
**REEL: 001959 FRAME: 0822**

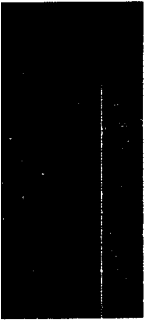
Pace & Sunburst Design	Pace Foods, a division of Campbell Soup Co.	Borrower	8/6/97	8/5/99
Bull's Eye name and design	Kraft Foods, Inc.	Borrower (sales to Sam's Club)	undated	1 year; renewable annually; Kraft may terminate upon 90-days notice
Bull's Eye name and design	Kraft Foods, Inc.	Borrower (sales to Winn Dixie)	8/13/97	1 year; renewable annually; Kraft may terminate upon 60-days notice
Sadler's Smokehouse and logo	Sadler's Smokehouse	Borrower	not dated	
Hormel Hormel and design	Hormel Foods, LLC	Borrower	5/19/99	5/18/00
Takeouts	Borrower	Hormel Foods Corporation	11/12/96	
All-Stars	Borrower	Kraft Foods, Inc.	4/16/98	4/15/08
Round Street	Borrower	Scott T. Motsinger	3/1/99	terminable upon 1 year notice
Avalanche	Borrower	Convenience Store Specialists, Inc.	1/23/97	1/2200; terminable upon 30-days notice
Avalanche	Borrower	Convenience Beverage Systems		
Avalanche	Borrower	Lebo Foods		
Borrower's trademarks	Borrower	The Southland Corporation		6/24/96

\*\*\* McLane Company, Inc. informed Borrower that McLane Company, Inc. received Office Actions from the Patent and Trademark Office stating that the examining attorney objected to registration on the basis that the marks are merely descriptive. No further action has been taken and a response must be filed with respect to all of such marks by September 5, 1999 to avoid abandonment.

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**TRADEMARK**  
**REEL: 001959 FRAME: 0823**





\*\*\*\* These registrations were in effect when McLane Foods, Inc. acquired the marks from Circle K. Borrower does not make any representation or warranty with respect to the status, validity or enforceability of these registrations.

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RECORDED: 09/16/1999

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